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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,094	09/18/2001	Gervasio Mercuri	2217/50147	1011

23911 7590 08/01/2002

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EXAMINER
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SIMONE, CATHERINE A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/01/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/869,094	MERCURI, GERVASIO
	Examiner Catherine Simone	Art Unit 1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 and 21-44 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, claims 1-19 and 21-44 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim 20 stands withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

### ***Claim Objections***

2. **Claim 1** is objected to because of the following informalities: "including" should be replaced with "comprising". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. **Claims 1-19 and 21-44** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "net-like" in **claims 6, 9, 11-14, and 21-36** is deemed vague and indefinite.

Clarification is requested.

The recitation "substantially equal" in **claim 10** is deemed vague and indefinite.

Clarification is requested.

The recitations "substantially impermeable", "respectively" and "quilted-like" in **claim 15** are deemed vague and indefinite. Clarification is requested.

**Claims 1, 5, 8, and 17** recite the limitation "the length". There is insufficient antecedent basis for this limitation in the claims.

**Claims 3 and 4** recite the limitation "said tubular member" in line 2 of claim 3 and line 1 of claim 4. There is insufficient antecedent basis for this limitation in the claims.

**Claims 10, 11, and 22-24** recite the limitation "the diameter of said fibrous casing" in line 2 of claim 10 and in line 1 of claim 11. There is insufficient antecedent basis for this limitation in the claims.

**Claims 11-13 and 23-27** recite the limitation "the diameter of said net-like tube" in line 2 of claim 11, in line 2 of claim 12 and in line 2 of claim 13. There is insufficient antecedent basis for this limitation in the claims.

**Claims 13 and 25-27** recite the limitation "the maximum diameter". There is insufficient antecedent basis for this limitation in the claims.

**Claim 15** recites the limitation "the surface". There is insufficient antecedent basis for this limitation in the claim.

**Claims 18 and 38-40** recite the limitation "the outside surface". There is insufficient antecedent basis for this limitation in the claims.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1-19 and 21-44** are rejected under 35 U.S.C. 102(b) as being anticipated by Mercuri (5,712,007).

Mercuri discloses a tubular casing for use with food products including: circumferential threads along the length of the tubular casing that become taut at a preset diameter (see col. 3, lines 1-10) so that the tubular casing has a predetermined diameter when filled with food products (see col. 3, lines 55-58). Regarding **claims 2, 7, 19 and 41-44** note the circumferential threads comprise elastic threads (see col. 6, line 56) having a predetermined elastic limit so that below the elastic limit, the threads are elastically extensible and that at the elastic limit threads become inextensible (see col. 3, lines 52-60). Regarding **claim 3**, note the circumferential threads comprise inextensible threads that are attached to the tubular member so that the threads become taut at a predetermined diameter (see col. 3, lines 52-60). Regarding **claim 4**, the tubular member comprises a knitted tube with the inextensible threads attached to the knitted tube (see col. 3, lines 35-45). Regarding **claim 5**, the knitted tube further comprises a circumferential elastic thread extending along the length of the knitted tube (see col. 6, lines 51-56). Regarding **claim 6**, the tubular casing is a net-like tube comprising spaced circumferential and longitudinal threads (see col. 5, lines 27-30). Regarding **claim 8**, note the elastic thread comprises a single

continuous thread that forms a spiral along the length of the tubular casing (see col.6, lines 52-56). Regarding **claims 9 and 21**, note a tubular fibrous casing located within and coextensive with the net-like tube, the fibrous casing comprising an inner liner for the net-like tube (see col. 4, lines 11-20). Regarding **claims 10 and 22**, note the circumferential elastic threads become taut at a diameter which is substantially equal to the diameter of the fibrous casing (Fig. 2; also see col. 3, lines 55-58). Regarding **claims 11 and 23**, the diameter of the fibrous casing appears to be greater than the diameter of the net-like tube so that the circumferential elastic threads apply compressive force to the fibrous casing as it is being filled (Fig. 2; also see col. 4, lines 6-10). Regarding **claims 12 and 24**, the diameter of the fibrous casing appears to be between 2 and 4 times greater than the diameter of the net-like tube (Fig. 2). Regarding **claims 13 and 25-27**, the diameter of the net-like tube where the elastic threads become taut appear to become smaller than the maximum diameter of the fibrous casing so that the circumferential and longitudinal threads press inwardly against the fibrous casing (Fig. 2; also see col. 4, lines 6-10). Regarding **claim 15**, the tubular casing comprises a knitted tube that is stretchable and substantially impermeable to the food products (see col. 6, lines 22-27) and circumferential and longitudinal threads secured to and spaced, respectively, along and around the knitted tube, the knitted tube still being stretchable when the circumferential threads become taut so that the circumferential and longitudinal threads press into the surface of the food product so that a quilted-like surface pattern is applied to the surface of the food product (see col. 6, lines 28-36). Regarding **claim 16**, the circumferential and longitudinal threads are secured to the first tubular portion as it being knitted (see col. 6, lines 47-50). Regarding **claims 17 and 37**, the circumferential thread is secured to the knitted tube such that it forms a continuous spiral along the length of the knitted

tube (see col. 6, lines 51-54), the longitudinal threads comprise interlocking loop stitches, each loop stitch extending between the circumferential threads (see col. 5, lines 47-60). Regarding **claims 18 and 38-40**, the circumferential and longitudinal threads are secured to the outside surface of the knitted tube (see col. 6, lines 28-30).

Regarding **claims 14 and 28-36**, process limitations, i.e. folded flat, are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation “folded flat with at least one pleat” in **claims 14 and 28-36** is a method of production and therefore does not determine the patentability of the product itself.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents are cited for further teachings of tubular casings similar to that instantly disclosed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (703) 605-4297. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*C.S.*  
Catherine Simone  
Examiner  
Art Unit 1772

July 26, 2002

*HP*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

7/27/02